

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE)	12-MDL-2323-AB
PLAYERS' CONCUSSION INJURY)	
LITIGATION)	
)	
)	
)	
KEVIN TURNER and SHAWN WOODEN,)	
on behalf of themselves and)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
NATIONAL FOOTBALL LEAGUE and)	
NFL PROPERTIES, LLC,)	
successor-in-interest to)	
NFL Properties, Inc.,)	Philadelphia, PA
)	May 4, 2018
Defendants.)	10:06 a.m.

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE ANITA B. BRODY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff	CHRISTOPHER SEEGER, ESQUIRE
Jim Finn, et al.	SEEGER, WEISS, LLP
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For Non-Party:	PETER C. BUCKLEY, ESQUIRE
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Proceedings recorded by electronic sound recording, transcript
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I N D E X

ARGUMENT:

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By Mr. Buckley

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By Ms. Seeger

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RULING BY THE COURT:

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By Judge Brody

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1 (The following was held in open court at 10:06 a.m.)

2 THE COURT: Okay, we're going to be --

3 COURTROOM DEPUTY: On the record?

4 THE COURT: Yes, we are on the record. I have on
5 the record Mr. Peter Buckley representing -- excuse me,
6 representing Thrivest Specialty Funding in Civil Action Number
7 12-2323, and I have Mr. Seeger on the phone, is that correct,
8 Mr. --

9 UNIDENTIFIED SPEAKER: Yes, Your Honor.

10 THE COURT: All right. There's a request for an
11 emergency ruling on the part of the Court and I've honored
12 your request, Mr. Buckley --

13 MR. BUCKLEY: Thank you.

14 THE COURT: -- so in fact I'm in on a Friday, so I
15 would like to know what you -- would you like to argue to me?

16 MR. BUCKLEY: Yes, Your Honor, I think our
17 arguments --

18 THE COURT: One minute because I know you have
19 another call so why don't you -- why don't you tell me why you
20 need -- why you think you need the testimony of this person
21 for -- for the preliminary -- the injunction -- it's a full
22 injunction -- why?

23 MR. BUCKLEY: Your Honor, the class counsel has
24 raised an issue in his motion for -- for injunction as to the
25 formation of an agreement to arbitrate which I believe is a

1 threshold issue before Your Honor that must be decided, and as
2 I point out in my motion, there's a distinction between the
3 validity of an entire agreement and the validity of the
4 arbitration clause.

5 And the Supreme Court in Rent-A-Center and in
6 Buckeye Check Cashing made clear that an arbitration provision
7 is severable from the remainder of the contract and that a
8 party's challenge to another provision of the contract, for
9 example a challenge to the assignment language in the contract
10 or to the -- you know, contract as a whole on the basis that
11 it violates the settlement agreement does not prevent a Court
12 from enforcing a specific agreement to arbitrate.

13 So it's my belief that unless Mr. Seeger concedes
14 that Mr. W entered into an arbitration agreement with
15 Thrivest, that I need to be able to take some discovery on
16 that issue so that we can present Your Honor with evidence
17 that notwithstanding any dispute over the validity of the
18 transaction under the settlement agreement, that there is a
19 valid and enforceable agreement to arbitrate consistent with
20 the Supreme Court's Rent-A-Center and Buckeye decisions such
21 that that threshold question must be answered first.

22 And, if it is determined that there is an agreement
23 to arbitrate, that any challenge to the validity of the
24 agreement must go before an arbitrator.

25 THE COURT: All right. Mr. Seeger, do you wish to

1 respond?

2 MR. SEEGER: Yeah, two quick points. One is the
3 mental state of Mr. W, by the way, Your Honor, who has ALS, is
4 very sick, has nothing to do with the contract that has been
5 deemed by Your Honor void ab initio. The agreement is gone.
6 There's no issue on the ab-- arbitration. This is pure
7 harassment.

8 The other part of it is, and it's very suspicious,
9 that Mr. Buckley chose to file a complaint to compel
10 arbitration in a Federal Court that is not -- and it's not
11 Your Honor, who has the MDL, has the settlement agreement,
12 control over the class members, the lawyers and every
13 provision in the settlement.

14 It's harassment. It's an attempt to go end-run
15 around your order and Mr. White's mental state has nothing to
16 do with a contract that is void.

17 THE COURT: Okay.

18 MR. SEEGER: We oppose it.

19 THE COURT: All right. I'm making a legal ruling
20 that as far as I'm concerned, the only issue before me is the
21 validity of the order that -- for this -- that hearing that I
22 scheduled -- I think it's the 9th -- that the only issue
23 before me is whether or not I had authority to enjoin the --
24 because that's what the issue -- that's what the hearing's
25 about -- whether I had the authority to enjoin the

1 arbitration.

2 So I think that no evidence is necessary, Mr.
3 Buckley. You brought it up, I am making a ruling at this
4 point so that you have that in your -- you know, you know
5 where I stand I'll see you on the 9th.

6 MR. BUCKLEY: May I be heard just shortly, Your
7 Honor?

8 THE COURT: Well, I already ruled so I don't think
9 the answer --

10 MR. BUCKLEY: I understand, I just want to clarify
11 something.

12 THE COURT: All right, sure.

13 MR. BUCKLEY: I understand then that Mr. Seeger is
14 not going to argue at this hearing that Mr. White didn't sign
15 the documents or that's not his initials at the bottom of that
16 page, but rather that the agreement is invalid under the
17 settlement agreement and therefore that argument, you know,
18 invalidates the entire agreement including the arbitration
19 clause. And if that is the argument --

20 MR. SEEGER: Your Honor, I --

21 MR. BUCKLEY: -- that I'm responding to, then I
22 understand that there's really no reason to address the
23 formation of the arbitration agreement, we're really dealing
24 with a legal argument and we probably don't need his
25 deposition.

Colloquy

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1 THE COURT: All right, Mr. Buckley --

2 MR. BUCKLEY: But because of what Mr. --

3 THE COURT: Mr. Buckley, that will be argued on the
4 9th so you can argue on --

5 MR. BUCKLEY: The other thing I wanted to put on the
6 record, Your Honor, is in our motion -- I believe it was
7 footnote 1, we asked Your Honor to clarify whether the motion
8 to withhold has been decided.

9 THE COURT: Mr. Buckley, that's my ruling on what
10 you put before me. My ruling is it's denied. That's all
11 that's going on today. If you have any other issues you wish
12 to raise, you'll raise them on the 9th, okay?

13 MR. BUCKLEY: Thank you, Your Honor.

14 THE COURT: All right, bye.

15 MR. SEEGER: Thank you.

16 (Matter concluded, 10:12 a.m.)

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C E R T I F I C A T I O N

I, Diane Gallagher, court approved
transcribers, certify that the foregoing is a correct
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DIANE GALLAGHER

DATE

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